

DOCKET FILE COPY ORIGINAL

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
)	
Transport Rate Structure)	CC Docket No. 92-213
and Pricing)	
)	
Usage of the Public Switched)	CC Docket No. 96-263
Network by Information Service)	
and Internet Access Providers)	

COMMENTS OF THE
COMMERCIAL INTERNET EXCHANGE ASSOCIATION

Respectfully submitted,

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TABLE OF CONTENTS

	<u>PAGE</u>
I. Introduction and Summary	1
II. ISPs Should Not Be Required to Pay the Current Interstate Access Charges	3
A. There Is No Persuasive Reason to Apply the Current Inefficient Access Charges to ISPs.....	3
B. Access Charges Would Significantly Impair the Development of the Internet	5
C. Imposition of Access Charges Would Frustrate Universal Service Goals.....	6
D. Imposition of Existing Access Charges on ISPs Would be Highly Anti-Competitive.....	8
E. Internet Technology is Entirely Incompatible with Payment of Per-Minute Voice Telephony Access Charges ...	9
III. Small ISPs Should be Exempt from Regulation.....	11
IV. Subscriber Line Charge Rules Should Promote Low-Cost Data Transport	12
V. Conclusion	14

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**COMMENTS OF THE
COMMERCIAL INTERNET EXCHANGE ASSOCIATION**

The Commercial Internet eXchange Association ("CIX"), by its attorneys, files these comments in response to the Notice of Proposed Rulemaking¹ ("NPRM") in the above-captioned dockets. CIX strongly supports the Commission's tentative conclusion that the current access charge regime should not be imposed on Internet service providers ("ISPs"). NPRM, ¶¶ 283-288. Further, CIX urges the Commission to promulgate subscriber line charge ("SLC") rules that promote low-cost data transport.

I. Introduction and Summary

CIX is the largest trade association of ISPs in the United States and throughout the world. CIX represents 170 domestic and international members, ranging from large providers of Internet

¹ Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, CC Dkt. Nos. 96-262, 94-1, 91-213, 96-263 (rel. Dec. 24, 1996). CIX will later file separate comments in response to the issues raised by the Commission's Notice of Inquiry ("NOI").

backbone service to small local providers offering "dial-up" service to residential and business end-users. (A copy of a recent CIX membership list is attached hereto.)² The members of CIX carry over 75% of the nation's Internet traffic. CIX members use a variety of transmission means in conjunction with their services, including local loops, ISDN, ATM, Frame Relay, and XDSL. These transmission services are obtained from a variety of sources, including incumbent LECs, alternative and competitive access providers, IXC's, wireless carriers, as well as private networks dedicated to Internet traffic. As a non-profit organization representing the industry, CIX works to facilitate global connectivity among commercial ISPs, and to foster fair and open environments for Internet interconnection and commercialization.

The NPRM (at ¶¶ 282-90) asks whether the current access charge regime should be applied to information service providers, including ISPs, which would reverse the Commission's prior policy decisions exempting such providers.³ As CIX sees it, the most significant Internet issue presented in the NPRM is whether an ISP should pay the current originating access charges⁴ when an ISP's dial-up customer connects through the PSTN to the ISP's router. CIX agrees with the Commission's view that the imposition of the current access charge regime in such Internet access arrangements is bad policy.

² These comments represent the views of CIX as a trade organization and are not necessarily those of individual CIX members.

³ The Commission has broadly exempted enhanced and information service providers from Title II regulation. See 47 C.F.R. § 64.702(a). The Commission has also decided that such providers should not be required to pay interstate access charges to the incumbent LEC for the origination or termination of interstate traffic. See, e.g., MTS and WATS Market Structure, Memorandum Opinion and Order, Dkt. No. 78-72, Phase I, 97 FCC 2d 682, 711-22 (1983).

⁴ Terminating access charges would not apply to ISP traffic because ISPs do not terminate calls to an end-user through the local switched telephone network. Further, unlike voice telephony, the end user does not simply engage in a transmission that ultimately terminates at another telephone exchange, but rather the Internet user interacts with the various Internet data bases, servers, and routers.

In addition, the NPRM proposes to change the subscriber line charge ("SLC") in ways that could significantly increase the cost of data transport over local lines, and incorporates in this proceeding the record already established on SLCs and virtual channels resulting from ISDN and other services. CIX opposes the proposals to eliminate or raise the current \$3.50 SLC cap for second lines to residences and the \$6.00 multi-line business SLC cap. These proposed modifications would discourage the plethora of data applications such as Internet access on the PSTN, and they would not resolve the inefficiencies of the current carrier common line ("CCL") charge. Similarly, a SLC for each virtual channel would be unnecessary, would fail to reflect the costs of those services, and would deter Internet and data applications to homes and businesses.

II. ISPs Should Not Be Required to Pay the Current Interstate Access Charges

Information service providers, including ISPs, are not subject to the Commission's LEC access charge regime and this is a particularly inappropriate time to impose a shift in that Commission policy.

A. There Is No Persuasive Reason To Apply the Current Inefficient Access Charges to ISPs

The Commission itself recognizes that the current access charge regime is not cost-based, and generally overtaxes interstate interexchange carriers in a manner that causes inefficiencies. *See NPRM* at ¶ 7 ("Our present interstate access charge regime, for example, requires incumbent LECs to maintain rate structures that have been widely criticized as economically inefficient"), ¶ 288 ("the existing access charge system includes non-cost-based rates and inefficient rate structures"). Under the circumstances, it is doubtful that any public interest whatsoever is served by imposing such charges on ISPs and, ultimately, their dial-up consumers. It simply makes no sense to burden a new class of service providers and their customers with charges that the Commission has recognized are outmoded and inefficient.

Non-cost-based and inefficient access charges are also the sort of regulatory impediments and interference with the current Internet market that Congress recently made clear that the Commission should avoid. Specifically, the Telecommunications Act of 1996 added Section 230 of the Communications Act, making the policy of the United States, and the Commission, "(1) to promote the continued development of the Internet . . . ; [and] (2) to preserve the vibrant and competitive free market that presently exists for the Internet . . . , unfettered by Federal or State regulation." 47 U.S.C. § 230(b)(1) & (2). Applying the current access charge regime to Internet service providers would run afoul of this clear Congressional direction.⁵

Moreover, the premises underlying the suggestion to impose access charges on ISPs are themselves unjustified. For example, the NPRM (at ¶ 285) posits that ISPs' "business line rates are significantly lower than the equivalent interstate access charges," presumably relying on the RBOC studies that advocate ISP access charges. However, CIX is not aware of any evidence, including that offered by the RBOCs, demonstrating that the current flat rate charges and other charges assessed on ISPs and their customers by incumbent LECs⁶ are less than revenues that would be derived if those services were paid for through the current access charges. In the same way, the parties supporting the ISP access charge allege that ISPs should pay because they "impose costs on the network that are similar to those imposed by providers of interstate voice telephony." NPRM at ¶ 286. This proposition is suspect because ISPs and their customers

⁵ More generally, imposing access charges on Internet service is also incompatible with the 1996 Act because Congress made clear that support mechanisms should be explicit, not implicit. S. Conf. Rep. No. 458, 104th Cong., 2d Sess. 1, 131 (1996). Congress' specific endorsement of "explicit" universal service support, see 47 U.S.C. §§ 254(e), 214(e), is incompatible with the subsidies embedded in the current non-cost-based access charge regime. See NPRM at ¶¶ 37-39.

⁶ For the incumbent LEC, these charges mean new revenues for additional and second lines of *both* the Internet end-user and the ISP, as well as additional services (e.g., ISDN) ordered by the ISPs and the end-user.

typically purchase entirely separate common lines to connect with the PSTN end-office switch, which is unlike interstate voice telephony. Therefore, the more relevant issue of *cost recovery* that the incumbent LECs derive from Internet usage of the PSTN must be more fully examined, and it is certainly not similar to interstate voice telephony.

Finally, we note that the Commission has three times considered the issue of whether "enhanced" or information service providers should be subject to IXC access charges, and each time decided that they should not. MTS/WATS Market Structure, Memorandum Opinion and Order, 97 FCC 2d at 715; Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Order, 3 FCC Rcd. 2631 (1988); Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for ONA, Report and Order and Order on Further Consideration, 6 FCC Rcd. 4524, 4535 (1991). This precedent, and the reliance interests that enhanced service providers have reasonably placed in those decisions, should hold significant weight in the Commission's consideration of these issues.

B. Access Charges Would Significantly Impair the Development of the Internet

The NPRM is correct that, had per-minute access charges applied to ESPs over the past 13 years, the Internet "would not have developed over the past 13 years to the extent [it has] today -- and indeed may not have developed commercially at all." NPRM at ¶ 285. The commercial Internet enjoyed by millions has sprung to life in the last decade with thousands of providers investing and competing vigorously in the low margin business of Internet access. The low cost of access has been an essential factor in the development of the market and in Internet entrepreneurs' willingness to invest in and build the Internet.

By the same token, imposing access charges on the Internet today would set back development of the Internet significantly. CIX believes that imposition of the current access charges on Internet traffic would produce sharp increases in the cost of business for provision of Internet access. Assuming that average current charges for originating access are approximately

January 29, 1997

\$.03 per minute⁷ and that ISPs would pass those costs on to their customers, the cost of residential Internet access would rise precipitously:

Increase in Internet Service Costs

<u>Weekly Internet Use (in hours)</u>	<u>Increase in Monthly Costs (\$)</u>
2	14.40
5	36.00
10	72.00
20	144.00

Given that many ISPs offer flat rate monthly residential service for \$20.00 or less, an access charge cost on even marginal use of the Internet (e.g., 2 hours per week) would significantly increase the costs to consumers. In fact, CIX estimates that it will take only 2¾ hours per week of Internet use before access charges would double a service price of \$20.00 per month. A doubling or tripling of the costs of obtaining Internet access will undoubtedly reduce both the number of Internet subscribers and their use of the Internet generally. In its NOI (at ¶ 316), the Commission states that it is "disinclined to take actions that would stifle, rather than enhance, the development of the Internet." There could be few more serious blows to the growth of the Internet than to impose a tax of this dimension on Internet usage.

C. Imposition of Access Charges Would Frustrate Universal Service Goals

As exemplified above, imposing the current access charges on Internet traffic would dramatically increase the cost of Internet service, seriously aggravating the problem of our

⁷ NPRM at ¶ 247. At this time, it is unclear exactly what charges would apply to an ISP under the current regime. For example, entrance facilities connecting the IXC's point of presence to the LEC's serving wire center would, presumably, not be used by an ISP. In addition, charges associated with use of the LEC tandem switch may or may not apply to ISP traffic.

society's growing gap in access to information. A small minority of "information haves" would be able to pay the steep new costs of Internet access, while the vast majority of "information have nots" would be shut out from the wealth of information on the Internet. This result would violate one of the Vice-President's core principles for development of the NII⁸ and the goal expressed by several Commissioners⁹ of avoiding "a society of information 'haves' and 'have nots.'"

Access charges would also undermine the specific Universal Service goals underpinning Section 254(b)(2) for access to "advanced services" and Section 254(h)(2) for access to telecommunications and information services for schools and libraries. As explained by the Conference Report, it is Congress' intent that, "subsection (h) will help open new worlds of knowledge, learning and education to all Americans -- rich and poor, rural and urban This universal access will assure that no one is barred from benefiting from the power of the Information Age." S. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 132-33. See also, Recommended Decision, CC Dkt. No. 96-45, FCC 96J-3 at ¶ 465 (rel. Nov. 8, 1996) (Joint Board concludes that discounted Internet access to schools and libraries serves Congressional goals for the promotion of "advanced services"). An assessment of access charges, especially charges that exceed costs, fundamentally impairs the Commission's regulatory efforts to implement the Section 254 mandates, by increasing the overall cost of service to the end user. With a rise in price, cash-strapped schools and less-affluent residential users will undoubtedly be inclined to abandon Internet service altogether.

⁸ Remarks of Vice President Al Gore to The Superhighway Summit, Royce Hall, UCLA, Los Angeles, CA, at 10 (Jan. 11, 1994).

⁹ See e.g., In the Matter of Federal-State Joint Board on Universal Service, Recommended Decision, CC Dkt. No. 96-45, FCC 96J-3, Statement by FCC Chairman Reed Hundt, at 1 (rel. Nov. 8, 1996); Remarks of FCC Commissioner Susan Ness before the Midwest Chapter of the FCBA, Chicago, IL (Oct. 15, 1996) ("It is essential that we reduce, not expand, the gap between 'information haves' and 'information have nots.'").

D. Imposition of Existing Access Charges on ISPs Would be Highly Anti-Competitive

Current access charges would provide incumbent LECs with a huge subsidy -- far exceeding costs -- to establish oligopoly control of the Internet access market. Several RBOCs now provide Internet access services as an intra-LATA "enhanced service" pursuant to structural separation or as an integrated offering pursuant to an approved CEI plan.¹⁰ With the approval of Section 271 applications, the RBOCs will also be able to offer InterLATA Internet access services. However, if the RBOCs can charge their Internet access competitors for access charges that are widely acknowledged as excessive, this poses a classic problem of "raising rival's costs" under the auspices of a mandated regulatory regime. This is especially problematic prior to the introduction of actual market competition, when ISPs will have no alternative but to use the incumbent LEC's local loop network for access to the end-user. Of course, while the RBOC's Internet service may also pay the same access charges, such a charge does not have the same economic impact because it merely pays its telephone affiliate, like moving each "access dollar" from one pocket to the other.

For the independent ISP, these excessive charges flowing to the RBOC could put it at a significant disadvantage in its competitive pricing with the RBOC Internet access service offering. Such a result would run contrary not only to the free market policy objectives for the Internet, as discussed above, it would also contradict the Commission's own long-held policy to

¹⁰ See In the Matter of Bell Atlantic Telephone Companies Offer of Comparably Efficient Interconnection to Providers of Internet Access Services, Order, CCB Pol. 96-09, DA 96-1647 (CCB rel. Sept. 30, 1996), recon. pending; In the Matter of Bell Operating Companies Joint Petition for Waiver of Computer II Rules, Order, DA 95-2264, 10 FCC Rcd. 13758 (CCB 1995).

promote a plethora of information service providers in a deregulated market.¹¹ While the Internet access market can and should be shared with incumbent LEC affiliates, the Commission has always closely guarded the possibility of unfair competitive advantage that is leveraged on the incumbent LEC's monopoly control over the local exchange. This same concern is reflected in the Telecommunications Act of 1996.¹² Therefore, access charges should not be imposed in such a way as to cause a competitive dislocation in the Internet services market.

E. Internet Technology is Entirely Incompatible with Payment of Per-Minute Voice Telephony Access Charges

The Commission is correct that it does not make sense to impose "an interstate regulatory system designed for circuit-switched interexchange voice telephony" on ISPs who receive calls from their customers over ILEC networks. NPRM at ¶ 288. Access charges based on per-minute metering of a dedicated telephone switch do not and cannot accurately measure the "lumpy" transmission of Internet traffic. While the Internet industry has spent billions in technology to interface with the voice-switch circuit (because the LEC's network is currently the only means of access to the vast majority of end-users), Internet communication is inherently different than traditional voice communication. Given the enormous differences in packet switched

¹¹ See, e.g., Second Computer Inquiry, Final Decision, 77 F.C.C. 2d 384, 429-30 (1980) (subsequent history omitted) (the public interest benefits in deregulation of enhanced services accrue to regulators, the service providers, consumers, and "[t]o the extent regulatory barriers to entry are removed and restrictions on services are lifted there is a corresponding potential for greater utilization of the telecommunications network through greater access to new and innovative service by a larger segment of the populace.").

¹² 47 U.S.C. § 254(k) ("A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition."); Id. at § 272(e)(3) (RBOC offering interLATA service shall charge independent entities the same rate for exchange access as it charges the interLATA affiliate).

communication and voice telephony, per-minute access charges borrowed from the voice telephony model simply are not an appropriate measure of usage for Internet traffic.

Moreover, Internet technology does not distinguish between packets directed to terminating locations within the originating user's telephone exchange area, and packets directed to locations outside that exchange. The Internet, unlike the incumbent LEC's traditional pricing model for voice telephony, has no use for the geographic boundaries defined by the voice exchange areas. ISPs do not measure Internet traffic according to what would have been "local" or "interexchange" had it been carried on the voice telephony network. Rather, the Internet operates on addresses that are tied to a location in the vast connection of networks, and not the end-user's physical location in the current telephone exchange geography. In addition, while Internet traffic is often perceived as predominantly interstate, that anecdotal perception may not be accurate and may vary from region to region.¹³ Therefore, it is entirely unsettled how, under the current rules, incumbent LECs would rationally assess access charges for Internet communication that originates in one exchange and terminates in another.

Similarly, because ISPs and the Internet generally do not measure communications along state or national boundaries, it is entirely unclear how the Commission would logically separate interstate from intrastate Internet communication. While one could imagine a parallel computer

¹³ As John Curran, of BBN Planet pointed out in his presentation at the FCC's January 23rd Bandwidth Forum, more and more of Internet communication is tending toward *local* interaction with, for example, local newspapers, town governments, local businesses, etc. Therefore, no hasty conclusions should be drawn that the Internet, which permits nearly real time interaction across the world, is less valuable and abundantly used for computer interaction at the very local level. Written Presentation of John Curran, BBN Planet, FCC Bandwidth Forum, at 4 (Jan. 23, 1997) ("many of the most exciting activities taking place on the Internet are actually quite local in scope Nowhere is this more clearly evidenced than by the abundance of city and community-based online directories which are growing rapidly in popularity.").

system that would track and measure inter/intra-state and intra/inter-exchange Internet traffic, no such system exists today and, aside from some regulatory edict, there is no purpose for such a highly expensive parallel system. Ironically, such a regulatory mandate would be imposed at the price of losing several benefits of the current Internet.¹⁴

III. Small ISPs Should be Exempt from Regulation

CIX estimates that many of its members would qualify as small businesses both because they have fewer than 1,500 employees¹⁵ and because they have averaged less than \$50 million in revenues for the past three years.¹⁶ Therefore, access charges on the ISP community will affect hundreds, if not most, of the businesses operating in the market today.

CIX submits that such an action would be contrary to the intent of Section 257, which provides that the Commission should eliminate, and not add to, "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications service and information services." 47 U.S.C. § 257(a). Section 257(b) further provides that the policy purpose for reducing regulatory burdens on small businesses is to promote a "diversity of

¹⁴ For example, a tracking system would undoubtedly slow down processing time, raise the cost of providing the service, drain resources and investment away from other Internet technologies, implicate subscribers' current privacy expectations. *etc.*

¹⁵ The NPRM (at ¶ 290) references "small entities" under the Regulatory Flexibility Act. As explained by the Commission (NPRM at ¶ 347) the 1,500 employee standard, derived from Small Business Administration regulations, is apparently applicable. See 13 C.F.R. § 121.201 (Division D, industry code 4813 defines small "Telephone Communications" companies as those with 1,500 or fewer employees).

¹⁶ Section 714(k)(1) of the Communications Act defines "eligible small business," for the purpose of qualifying for the Telecommunications Development Fund, as a company with average revenues for the past three years of \$50 million or less. 47 U.S.C. § 614(k)(1). CIX believes that this is also a viable benchmark for an ISP's status as a "small business or entrepreneur" under Section 257.

media voices, vigorous economic competition, [and] technological advancement." *Id.* at § 257(b). Because access charges will threaten the very viability of smaller independent ISPs, such a regulatory shift is contrary to the Commission's Section 257 obligations.

IV. Subscriber Line Charge Rules Should Promote Low-Cost Data Transport

The Commission should adopt subscriber line charge rules that encourage and, in any event, do not impede the introduction of transmission methods for data services. For that reason, CIX actively participated in the Commission's ISDN SLC Proceeding.¹⁷ In brief, CIX argued that the Commission should not charge a SLC for each derived channel resulting from the introduction of a new transmission technology. Instead, CIX urged the Commission to adopt a "per-facility" SLC approach, whereby one SLC is assessed for each physical line.

CIX continues to believe that the Commission should review the Common Carrier Bureau's initial assessment of one SLC for each virtual channel.¹⁸ As the cost data for BRI and PRI ISDN indicate,¹⁹ there is no linear correlation with the relative NTS cost increases and the number of resulting virtual channels. In fact, the NTS cost ratio is significantly lower than number of channels offered through either PRI or BRI ISDN. While the evidence does suggest that NTS costs are increased as compared to standard analog line costs, CIX believes that the SLC should remain the same. LECs could then recover those additional ISDN costs through pricing of those services if those costs are justified by state regulatory bodies. In that way,

¹⁷ End User Common Line Charges, CC Dkt. No. 95-72, Notice of Proposed Rulemaking, 10 FCC Rcd. 8565 (1995). CIX filed comments and reply comments in that proceeding, a copy of each are attached hereto.

¹⁸ NYNEX Telephone Companies Revisions to Tariff F.C.C. No. 1, 7 FCC Rcd. 7938 n.11 (CCB 1992), *aff'd on recon.*, 10 FCC Rcd. 2247 (1995).

¹⁹ NPRM at ¶ 70 and Table 2.

competitors offering high bandwidth alternatives to the incumbent LEC can price compete in a straightforward manner.

In addition, CIX is opposed to the proposals at ¶ 65 of the NPRM to raise and/or eliminate the SLC cap for second and additional lines to residential subscribers, as well as multi-line business users. In particular, CIX objects strongly to the Commission's suggestion that, upon the showing of some potential or actual local loop competition, an incumbent LEC could assess a SLC "that exceeds the per-line loop costs assigned to the interstate jurisdiction." NPRM at ¶ 65. Providing monopoly LECs with a license to impose subscriber line charges in excess of costs would be utterly inconsistent with the purposes of this proceeding -- to rectify non-cost-based access charges that impose economic externalities on the voice telephony markets.

Moreover, raising the SLC for second lines into the home as well as multi-line businesses will directly and negatively impact on the price of Internet service. Second lines into the home are currently the prevailing method for residential access to the Internet. The Commission's proposal to eliminate the \$3.50 SLC cap (or raise it to \$6.00) would significantly impede the growth of Internet usage by residences, as it is widely acknowledged that those second lines are oftentimes ordered to connect home computers to the Internet. In addition, the elimination of the SLC cap for multi-line business users would significantly raise the cost of lines serving the ISP's local router which, in turn, would also raise the cost of Internet service. These price increases are contrary to the goal of encouraging Internet access for all Americans.

Finally, we note that the proposals to raise the SLCs only for additional residential and multi-line business users will not resolve the issues associated with common line cost recovery. The Commission has offered several alternative solutions to reform the CCL, NPRM at ¶¶ 60-62, and it should work with interested parties to bring common line charges assessed against IXC's to cost. The Commission should not, however, raise the SLC caps, which will have a

January 29, 1997

disproportionately negative impact on Internet providers and their end users, and the growth of the Internet as a promising means of commerce and communication.

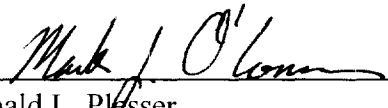
V. Conclusion

CIX urges the Commission to follow its tentative conclusion and not impose current access charges on ISPs. Further, the Commission should not impose additional costs on data providers and their subscribers with increases in the current business and residential line SLC caps.

Respectfully submitted,

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Atson, Inc.	GST Internet, Inc.	Pearl Vision
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Bekkoame Internet, Inc.	Hookup Communications Corp.	PSINet
British Telecom	HP Labs Bristol	Qwest Communications
Bull HN Information Systems Inc.	I-2000	RACSAnet
Cable Internet	Icon CMT	Rapid Systems, Inc.
Telewest Communications, Ltd.	Inet, Inc.	SARENET SA
Cable Online	Information Access Technologies. Inc./Holonet	Singapore Telecom
Cable & Wireless Internet Exchange	INS GmbH	SOVAM Teleport
Centnet	Integrated Network Services	Sprint
CERFnet	Intermedia Communications Inc.	Sun Microsystems
Compuserve	Internet Bermuda Limited	Synergy Communications
Connect Com.au	Internet Corporativo, SE de CV	Tachyon Communications Corporation
CR Internet	Internet Exchange Europe	Tchui Data, Ltd.
CRL Network Services	Internet Initiative Japan (IIJ)	Telecom Finland
Crocker Communications	Internet ProLink SA	Teleglobe, Inc.
CSIR Information Services (Infotek)	Internet Public Access Corp	The Internet Mainstreet (TIMS)
CTD Technologies, Inc.	Interpath	TheOnRamp Group, Inc.
CTS Network Services	Interserve Communication (H.K.) Ltd.	Thoughtport
Cybergate, Inc.	ITnet SpA	Threeweb Corporation
Dart Net Ltd.	IUnet s.p.a.	TogetherNet
Data Research Associates, Inc.	JC Information Systems	Tokai Internetwork Council
Data Xchange	JTNET	Tokyo Internet Corporation
Datalytics	Council for Advanced Communications Network	Total Connectivity Providers
Datanet Communications Ltd.	Kokusai Denshin Denwa, Co., Ltd. (KDD)	TWICS Internet Services
Demon Internet Limited	Korea Telecom	U-NET Ltd.
Digital Equipment Corporation	Lafitte, Morgan & Associates	USIT United States Internet, Inc.
Digital Express Group	LDS I-America	UUNET PIPEX
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In the Matter of)
)
End User Common Line)
Charges)

CC Docket No. 95-72

**COMMENTS OF THE COMMERCIAL INTERNET
EXCHANGE ASSOCIATION**

The Commercial Internet eXchange Association ("CIX"), by its attorneys, respectfully submits these comments in response to the Commission's Notice for Proposed Rulemaking ("NPRM") in the above-referenced docket. The Commission seeks comment on its policy of requiring subscriber line charges ("SLCs") based on the number of "derived" channels provided to an end user through Integrated Services Digital Network ("ISDN"). CIX applauds the Commission's efforts to untangle this complicated issue and looks forward to a resolution that allows competition between providers, and between industries, to flourish.

CIX is a non-profit organization with a membership of 160 Internet service providers. It operates to facilitate global connectivity among commercial independent Internet service providers throughout the world. CIX works to foster fair and open environments for Internet commercialization and interconnection, and provides a forum for the exchange of experiences and ideas to enhance the vitality of the IISP industry. CIX members use various forms of transport to connect subscribers to the Internet, including traditional business lines, private lines, ISDN, ATM, SMDS and Frame Relay.

As an initial matter, CIX notes that the Commission's NPRM assumes that implementation of ISDN, and a "physical line" approach to SLC charges, may result in a reduction of SLC support payments for non-traffic sensitive costs of the local loop. NPRM at ¶ 18. CIX believes that the Commission should study this assumption carefully. It may be that, even as ISDN is implemented, the total number of physical lines is not materially diminished, and so there is no real danger to universal service in the switched voice market. CIX believes that the economic effect of ISDN on total SLC support payments needs to be thoroughly examined before the Commission attempts to add regulatory charges on the LEC's provision of ISDN.

In its NPRM, the Commission noted that it must "avoid erecting regulatory barriers to the development of beneficial new technologies" but at the same time it "should not amend our rules to favor new technologies and services simply because they are new." NPRM, at ¶ 17. CIX also supports these goals. Unfortunately, SLCs based upon derived channels, as described in the NPRM at ¶ 31, may result in both regulatory disincentives to innovate and disadvantages to ISDN as compared to other competing technologies.

The development of new technologies will be hindered because it essentially imposes a tax on the innovation and investment that went toward the development of ISDN. Research and development efforts toward even more efficient transport technologies (*e.g.*, SMDS, ATM, and Frame Relay) will suffer from a regulatory approach that increases the SLC burden in direct proportion to the number of derived channels.

Moreover, SLCs based on derived channels will have the effect of inordinately taxing data and other enhanced services, including Internet access service. It seems self-evident that customers ordering PRI ISDN, for example, will often use the additional channel capacity for data and enhanced services. For the customer, applying a

SLC to every derived channel increases the cost of those services. CIX recognizes that the Commission is attempting to balance many factors, including the maintenance of IXC access charges and continued support for the non-traffic sensitive costs of the local loop. However, achieving this balance by indirectly raising the costs of providing enhanced services is contrary to the Commission's commitment to avoid regulatory burdens on such services.¹ Raising the costs, or skewing the market, for advanced transport services also threatens the growth of the National Information Infrastructure, including Internet services.

The continuation of the approach taken in the NYNEX Reconsideration Order² will also create market anomalies. If ISDN becomes subject to multiple SLCs and more expensive relative to alternative data networking services (*e.g.*, SMDS, ATM, and Frame Relay), the Commission's policy will discourage the use of ISDN and push customers toward less costly alternatives. This result will not only frustrate the Commission's goal of regulatory parity of technologies, NPRM, at ¶ 17, it will also prevent end-users from making economically efficient decisions. Further, IXC providers of PRI ISDN compete with the LEC ISDN services; an additional regulatory cost on the

¹ See Second Computer Inquiry, 77 F.C.C. 2d 384, 433 (1980), *modified*, Memorandum Opinion and Order, 84 F.C.C. 2d 50, *aff'd*, Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied sub nom.*, Louisiana Public Service Commission v. FCC, 461 U.S. 938 (1983). We also note that increases in access charges for enhanced services have met with great public resistance in the past. See Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Notice of Proposed Rulemaking, 2 FCC Rcd. 4305 (1987); Order, 3 FCC Rcd. 2631 (1988).

² NYNEX Telephone Companies Revisions to Tariff F.C.C. No. 1, Transmittal No. 116, Order on Reconsideration, 10 FCC Rcd. 2247 (1995).

LEC's service will only encourage customers to switch to competitive providers, which may exacerbate universal service concerns.

CIX believes that SLCs based on derived channels do not adequately address the reality of an environment in which there are numerous access and transport mechanisms based on a variety of technology. In reviewing the comments in this proceeding, CIX urges the Commission not to adopt a derived channel approach to SLCs and base the charge instead upon a more competitive measure.

Respectfully submitted,

THE COMMERCIAL INTERNET
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Date: June 29, 1995

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

**STAMP IN
RECEIVED**
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OFFICE OF SECRETARY

In the Matter of)	
)	
End User Common Line)	CC Docket No. 95-72
Charges)	

**REPLY COMMENTS OF THE COMMERCIAL INTERNET
EXCHANGE ASSOCIATION**

The Commercial Internet eXchange Association ("CIX"), by its attorneys, respectfully submits these reply comments in response to the comments filed in this proceeding.

Consistent with the majority of commenters adopting a proposal, CIX supports a SLC charge on LEC ISDN service using the "per-facilities" approach as outlined in paragraphs 24 through 26 of the Notice of Proposed Rulemaking. Alternatively, several commenters propose a slightly different version of the "per-facilities" approach which would impose one SLC for each copper pair to the end user. See, e.g., Comments of Tele-Communications Association. While it favors the "per-facilities" approach, CIX believes this latter approach is also far better than the other alternatives suggested in the NPRM.

The "per-facilities" and "per copper pair" approaches minimize the deleterious impact of SLC charges on the deployment of ISDN. Parties from all sides endorsed these approaches, including industry leaders such as Pacific Bell and Nevada Bell, MCI, Microsoft, Time Warner, GTE, America OnLine, CompuServe, Prodigy, and GE Information Services. Industry trade associations, such as the USTA, ITIC, NTCA, CMA, and API also support these alternatives. Finally, these proposal gained support even from non-industry commenters with public interest objectives, such as the Center for Democracy and Technology and the Tennessee Public Service Commission. Even commenters that did not explicitly support a particular alternative expressed

concern that the Commission not allow SLC charges to impede the implementation of ISDN.
See, e.g., Comments of West Virginia University; Comments of National Public Radio, Inc.

CIX also notes that, to its knowledge, none of the commenters endorsed the Commission's approach of charging one SLC for each derived channel.

CIX urges the Commission not to adopt a SLC approach that impedes the growth of LEC-provided ISDN service. Among the options proposed, CIX concludes that a "per-facilities" approach or hybrid "per copper pair" approach is the best solution until the broader issue of comprehensive access charge reform can be addressed.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing "Reply Comments of the Commercial Internet Exchange Association was this 14th day of July, 1995 mailed, postage prepaid to the following:

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